Supreme Court of the United States

FOR A WRIT OF CERTIORARI TO THE
ED STATES COURT OF CLAIMS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No.

DANIEL G. ALEXANDER, ET AL., *Petitioners,*

v.

THE UNITED STATES, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Carl L. Shipley and Samuel Resnicoff on behalf of Daniel G. Alexander, et al., pray that a writ of certiorari issue to review the judgment of the United States Court of Claims, entered in the above captioned case on December 1, 1960, dismissing petitioners' petition.

OPINION BELOW

The opinion of the court below is reported in Appendix at page 5a hereof.

JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked pursuant to 28 U.S.C. 1255.

QUESTIONS PRESENTED

Whether the United States Court of Claims erred in holding that certain employees of the United States Maritime Service are not entitled to recover loss of salary resulting from a reduction in their ranks and rates of pay and allowances in violation of Section 216 (a) of the Merchant Marine Act of 1936.

STATUTE INVOLVED

Section 216 (a) of the Merchant Marine Act of 1936, as amended, 53 Stat. 1182-1183, 46 U.S.C. 1126 (a), provides:

> "* * * The ranks, grades, and ratings for the personnel of said Service shall be the same as are now or shall hereinafter be prescribed for the personnel of the Coast Guard."

STATEMENT OF THE CASE AND ARGUMENT

Petitioners are or were administrative enrollees in the United States Maritime Service, assigned for duty to the United States Merchant Marine Academy at Kings Point, New York. On April 30, 1954, each of them was reduced in rank or rating and compensation by the Commandant as a result of a so-called billet survey made at the direction of the Maritime Administrator, Department of Commerce. Some of petitioners had held their ratings since 1942. Petitioners brought suit in the United States Court of Claims alleging that their loss of salary resulted from procedurally defective administrative action in violation of Section 216 (a) of the Merchant Marine Act of 1936, in that the billet survey was an administrative device whereby they were subjected to the standards and provisions of the Classification Act of 1949 (5

U.S.C.A. 1071, 1101 (b), and denied their rights under the Career Compensation Act (37 U.S.C.A. 231).

On March 5, 1958, the Court of Claims ruled (141 Ct. Cl. 569); see Appendix page 1a.

Thereafter a Commissioner of said Court held a trial in accordance with said decision and filed a report of his findings of fact (R. 10), and the Court of Claims adopted said findings in substantial part, and rendered the decision of December 1, 1960, from which this appeal by way of certiorari is taken (R. 30), see Appendix page 5a.

In said decision, some plaintiffs were permitted to recover lost salary. This petition is not filed by those plaintiffs. Petitioners herein were plaintiffs in said action, who were denied recovery, and as to whom the petition in the Court of Claims was dismissed.

Petitioners herein contend that they are entitled to recover under said decision. The Government's action was stipulated to be unlawful, the Court below so ruled, and they suffered loss of pay, allowances, rank or rating, longevity and other pecuniary benefits, as a result of said unlawful action.

The action of the Court of Claims in dismissing the claims of petitioners herein was not based on substantial evidence. In its decision of March 5, 1958 herein, *supra*, the Court of Claims held:

> "Unless the status assigned to the positions in the re-evaluation *happened to coincide with that of comparable positions* in the Coast Guard, we think the re-evaluation was illegal, and the *persons who were prejudiced by it may recover.*" (Emphasis supplied)

In its decision of December 1, 1960, the Court of Claims dismissed the claims of Petitioners herein without regard for the facts contained in its decision (R. 34-52). In substance, those facts were:

1. Petitioners suffered a loss of pay as a result of job reevaluation. (R. 34, Findings 1-4).

2. The Government conceded that its procedures were not in accordance with the applicable statute. (R. 34, Finding 1).

3. In demoting petitioners herein, the Maritime Administration "did not know whether the plaintiffs had ranks and pay comparable to Coast Guard personnel before or after they were demoted as a result of the re-evaluation of their billets." (R. 39, Finding 5).

4. Prior to demotion, petitioners "were assigned ranks and rating and granted pay and leave assimilated to that of the United States Coast Guard." They "enjoyed the pay and all allowances equivalent to the Coast Guard." (R. 43, Finding 13).

As a result of the Court of Claims decision of March 5, 1958, the burden of showing petitioners herein had "status" comparable to the Coast Guard after demotion shifted to the Government. (R. 31).

What evidence of comparable status is there in the record? At the trial the Government offered one witness on this central and vital issue. (R. 47, Finding 18). As set out in the Court of Claims findings (R. 48), "When asked if the *status* assigned to the positions in the re-evaluation happened to coincide with that of comparable positions in the Coast Guard, he (The Witness) replied that he had not seen or studied the actual position descriptions of the Mari-

time Administration and therefore *could not testify as to whether they are comparable to the examples he made independently.*" (Emphasis supplied).

Not only was there no evidence of comparable status for petitioners after demotion in the record, but there was "no evidence in the record as to whether the positions assigned to plaintiffs were the same as to positions in the Coast Guard prior to the re-evaluation effective on April 30, 1954." (R. 48, Finding 18).

Nonetheless, despite no evidence of comparability of status of petitioners to Coast Guard personnel, the Court of Claims disregarded the law of the case, as determined by itself in its March 5, 1958 decision (141 Ct. Cl. at 573) that absent comparable status after demotion petitioners could recover, it dismissed their claims on the basis of speculation, hypothesis and guess, without any substantial evidence to support its conclusion. As to petitioners Daniels, Feron, Foley, Kasil, Kopeynskas, Paradisen, Schidlowski, Smaidzun, and Trznadel, the Court of Claims held it was not possible to apply Section 216 (a) of the Act (R. 33). As to the others, the Court of Claims simply treated Commander Pfeiffer's testimony as if he had testified as to comparable status, instead of the opposite, and dismissed their claims. Petitioners respectfully submit that such action by the Court of Claims is contrary to the evidence and can only be rectified by this Court.

CONCLUSION

Wherefore the premises considered, petitioners pray that a writ of certiorari be granted.

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